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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940

No. 620

LAURA S. K. SLOCUM, A. COHN and MERWIN M. HART,

Petitioners,

vs.

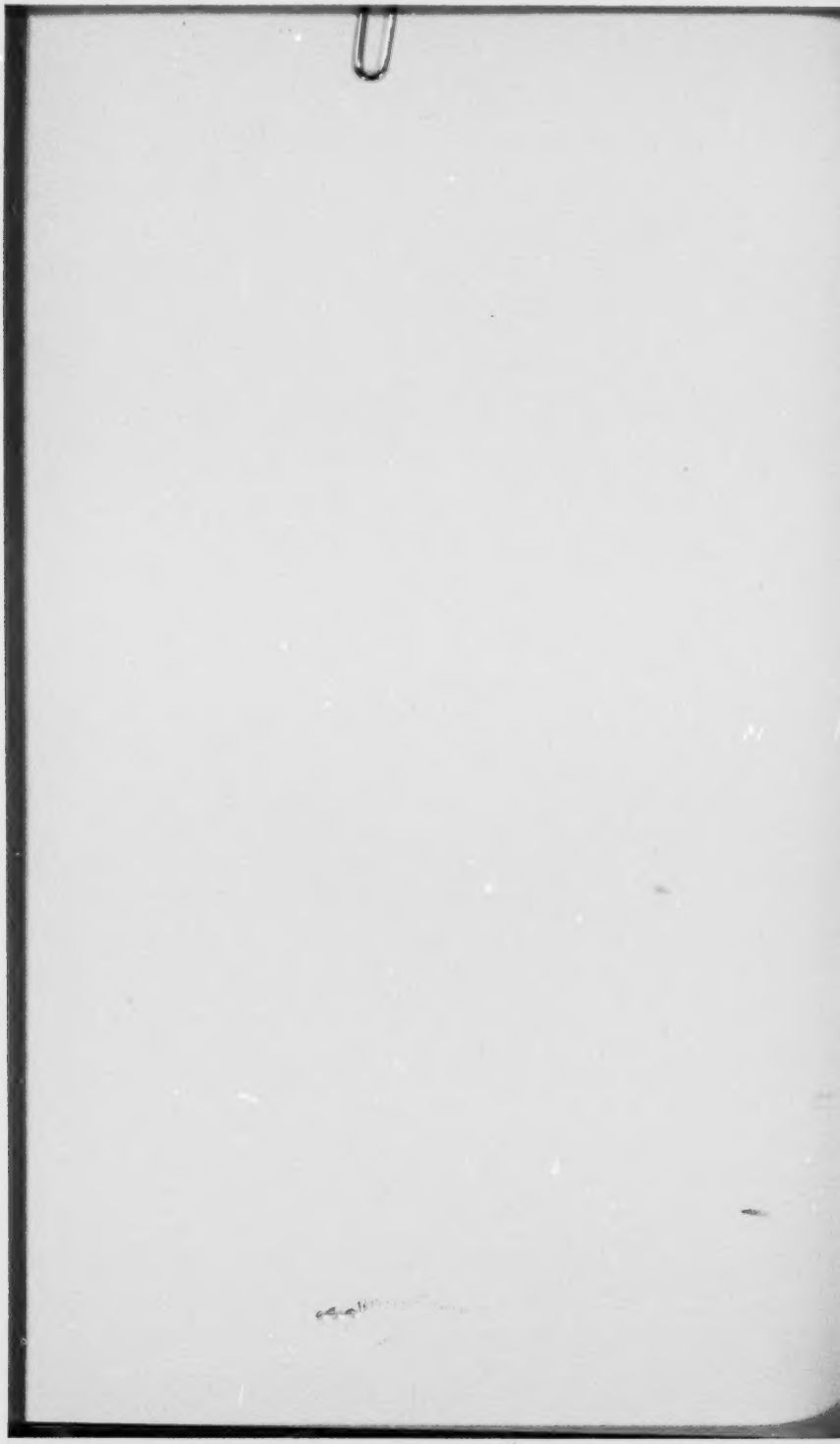
FIRST NATIONAL BANK OF CHICAGO, JOHN C. MEINERS and JOHN C. PARTRIDGE, individually and as members of a Bondholders' Protective Committee under a Deposit Agreement dated December 31, 1931, A. HARRIS, M. ROTHSCHILD, H. H. BAUM, SECURITY NATIONAL BANK OF SHEBOYGAN, WISCONSIN, as Trustee under the Last Will and Testament of Joachim Johann, and A. C. ALLYN & CO., a Delaware Corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, AND BRIEF IN SUPPORT THEREOF

MEYER ABRAMS,
LEO L. GINSBURG,
134 North LaSalle Street,
Chicago, Illinois,
Attorneys for Petitioners.

State Law Printing Company, 173 W. Madison St., Chicago--FRAnklin 5501



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PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, AND BRIEF IN SUPPORT THEREOF

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners, Laura S. K. Slocum, A. Cohn and Merwin M. Hart, pray the issuance of a Writ of Certiorari to review the judgment of the Appellate Court of Illinois

for the First District whose judgment was made final by the denial of leave to appeal by the Supreme Court of Illinois.

Statement of the Matter Involved.

The primary question presented for review is the decision of the Appellate Court of Illinois sustaining the defense of *res adjudicata* based on a decree in an alleged class action where the interest of the petitioners was adverse to that of the alleged representative of the class and from which action petitioners were deliberately excluded as parties. By that action petitioners were denied due process guaranteed by the Fifth and Fourteenth Amendments to the Federal Constitution. There is also involved the action of the court in sustaining another defense of *res adjudicata* based on 77B proceedings on subject matters which were not within the jurisdiction of that court. In sustaining such a defense petitioners were denied due process.

The decree in the class action adjudicated that the officers of the mortgagor corporation who guaranteed its bond issue in the amount of $1,500,000 were released from their liability (R. 14-19).* Petitioners, who were known to the representatives in the class action as opposing such release, were excluded as parties. One of the petitioners, Slocum, had procured a judgment based on the guaranty which was affirmed by the Appellate Court (296 Ill. App. 362) and which was then in full force and effect. She was denied admission as a party (R. 31). The decree which adjudicated her rights, without letting her in as a party, was thereafter pleaded in satisfaction of her judgment (R. 19). The other petitioners, holders of bonds who were known to the representative in the class action that they opposed the re-

* The reference is to the abstract of the record.

lease of the guaranty, were not made parties. The decree in such a class suit was pleaded in bar and sustained, to the suit which sought the enforcement of the guaranty. The suit also involved a cause of action against the Mortgage Trustee and Bondholders' Protective Committee for malfeasance and misfeasance (R. 20-38). The trial court also sustained a defense to this action based on a plea of *res adjudicata* by reason of the 77B proceedings. The judgment of the trial court was affirmed by the Appellate Court (R. 59) and leave to appeal was denied by the Supreme Court of Illinois.

The opinion (pp. 1-2)* states that the matter was disposed of below by a reference to a Master "who took evidence and reported, recommending that the Amended Complaint filed February 1, 1939, be dismissed" and that "the Chancellor approved the report and sustained the motions to dismiss." This is an inaccurate statement. No reference was had. No report was given. The matter was disposed of by the court on the pleadings when it sustained the motions to dismiss (R. 57, 58).

Questions Presented.

1. Whether petitioners were deprived of due process of law guaranteed by the Fifth and Fourteenth Amendments to the Federal Constitution when the court sustained the defense of *res adjudicata* by reason of the decree in the class action to which petitioners were excluded as parties and whose interest were adverse to the alleged representatives of the class.

2. Whether the order in the 77B proceeding was properly pleaded in bar to petitioners' action against the Trustee and the Bondholders' Protective Committee for malfeasance and misfeasance which matters were not

* The opinion is printed in the petition for leave to appeal which is included in the record (p. 2).

dischargeable in bankruptcy and which were not within the jurisdiction of the Bankruptcy Court when it passed on the Reorganization Plan, and thereby petitioners were deprived of due process of law.

Reasons for the Allowance of the Writ.

1. The decision of the Appellate Court that a void decree may be pleaded in bar (if not appealed by persons who were not parties to the proceedings and not fairly represented in the alleged class action) is in conflict with the most recent decision of this court which reversed the highest court of Illinois on a similar proposition (*Hansberry* v. *Lee,* 85 L. ed. p. 11).

2. The judgment of the State Court is challenged for want of due process and this court will exercise its discretionary power to examine the course of the proceedings as to ascertain whether petitioners were accorded due process (*Hansberry* v. *Lee, supra*).

3. The question whether an adjudication in 77B proceedings in excess of jurisdiction may be pleaded in bar to an action against Trustees for malfeasance deserves the exercise of the discretionary power of this court to issue the writ.

4. The decision in the instant case that judgments or decrees procured by fraud and collusion or without jurisdiction may be pleaded in bar to an action by a stranger to the proceeding and that such judgments are not subject to collateral attack is contrary to the fundamental law of the land and to the accepted procedure, and the Writ should be awarded.

Prayer for Relief.

Wherefore, the above petitioners pray the allowance of a Writ of Certiorari to the Appellate Court of Illinois, First District, to the end that the cause herein may be

reviewed and decided by this court and that its judgment be reversed with directions to reverse the order of the Superior Court of Cook County and to rule on the respondents to answer petitioners' complaint.

MEYER ABRAMS and
LEO L. GINSBURG,
Attorneys for Petitioners.